

CHAPTER 26

REGULATION OF HEALTH CARE FACILITIES AND ASSISTED LIVING PROGRAMS — COMPLAINTS OR CITATIONS — REVIEW

S.F. 394

AN ACT relating to informal conferences on contested citations or regulatory insufficiencies in health care facilities or assisted living programs and including applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135C.41, subsection 2, Code 2013, is amended to read as follows:

2. Notify the director that the facility desires to contest the citation and request an informal conference with a ~~representative of the department~~ an independent reviewer pursuant to section 135C.42.

Sec. 2. Section 135C.42, Code 2013, is amended to read as follows:

135C.42 Informal conference on contested citation.

1. The director shall assign a representative of the department, other than the inspector upon whose inspection the contested citation is based, provide an independent reviewer to hold an informal conference with the facility within ten working days after receipt of a request made under section 135C.41, subsection 2. At the conclusion of the conference the representative independent reviewer may affirm or may modify or dismiss the citation. In the latter case, the representative independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the director, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the representative independent reviewer, as the case may be, comply with section 135C.41, subsection 1.

2. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

3. The department shall hold the informal conference, as required in this section, concurrently with any informal dispute resolution held pursuant to 42 C.F.R. § 488.331 for those health care facilities certified under Medicare or the medical assistance program.

Sec. 3. Section 135C.43, subsection 1, Code 2013, is amended to read as follows:

1. A facility ~~which~~ that desires to further contest an affirmed or modified citation for a Class I, Class II, or Class III violation, may do so in the manner provided by chapter 17A for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days after the informal conference or after receipt of the written explanation of the ~~representative delegated independent reviewer~~ provided to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

Sec. 4. Section 231C.8, Code 2013, is amended by striking the section and inserting in lieu thereof the following:

231C.8 Exit interview — issuance of findings.

1. The department shall provide an assisted living program an exit interview at the conclusion of a monitoring evaluation or complaint investigation, and the department shall inform the program's representative of all issues and areas of concern related to the insufficient practices. The department may conduct the exit interview in person or by

telephone, and the department shall provide a second exit interview if any additional issues or areas of concern are identified. The program shall have two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. The department shall issue the final findings of a monitoring evaluation or complaint investigation within ten working days after completion of the on-site monitoring evaluation or complaint investigation. The final findings shall be served upon the program personally, by electronic mail, or by certified mail.

Sec. 5. Section 231C.9, Code 2013, is amended to read as follows:

231C.9 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an assisted living program by the department pursuant to this chapter, ~~including the conclusion of informal review,~~ the department's final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the assisted living program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 6. NEW SECTION. **231C.9A Informal conference — formal contest — judicial review.**

1. Within twenty business days after issuance of the final findings, the assisted living program shall notify the director if the program desires to contest the findings and request an informal conference.

2. The department shall provide an independent reviewer to hold an informal conference with an assisted living program within ten working days after receiving a request from the program pursuant to subsection 1. At the conclusion of the informal conference, the independent reviewer may affirm, modify, or dismiss a contested regulatory insufficiency. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the department and to the program.

3. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of an assisted living program in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

4. An assisted living program that desires to further contest an affirmed or modified regulatory insufficiency may do so in the manner provided by chapter 17A for contested cases. The program shall give notice of intent to formally contest a regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

5. An assisted living program that has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

Sec. 7. **APPLICABILITY.**

1. The sections of this Act amending sections 135C.41, 135C.42, and 135C.43 apply to an informal conference requested under chapter 135C on or after January 1, 2014.

2. The sections of this Act amending sections 231C.8 and 231C.9, and adding section 231C.9A, apply to assisted living programs desiring to request an informal conference on or after January 1, 2014.

Approved April 5, 2013